

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

MICHAEL PORTIS

PETITIONER

VS.

CIVIL ACTION NO. 3:20CV316TSL-RPM

BILLIE SOLLIE

RESPONDENT

ORDER

This cause is before the court on the report and recommendation of Magistrate Judge Robert M. Myers entered on January 20, 2021, recommending that Portis' § 2241 petition be dismissed.

Petitioner Michael Portis has filed an objection to the report and recommendation, by which he urges that he is innocent of the crime for which he is awaiting trial. Having reviewed the objection, the court concludes that it is not well taken and is therefore overruled. Further, having reviewed the report and recommendation, the court concludes that it is well taken and hereby adopts, as its own opinion, the magistrate judge's report and recommendation subject to the following modifications:

Following receipt of the report and recommendation and petitioner's objection thereto, the respondent filed a response to the objection. In support of the response, he has offered a February 1, 2021 order of the Circuit Court of Lauderdale County

resetting Portis' trial to July 27, 2021. According to the order, Portis' counsel sought the delay to review newly obtained discovery with defendant. In light of this, the court concludes that the further delay in commencing his trial is not attributable to state. The court further concludes that the petition should be dismissed without prejudice as to any failure to exhaust and with prejudice as to the merits.

Based on the foregoing, it is ordered that the report and recommendation of United States Magistrate Judge Robert P. Myers entered on January 20, 2021, as modified, be, and the same is hereby, adopted as the finding of this court. Accordingly, it is ordered that the respondent's motion to dismiss is granted and that the petition is dismissed without prejudice as to any failure to exhaust and with prejudice as to the alternative ruling on the merits.

It is further ordered that a certificate of appealability should issue as both to the question of whether Portis has exhausted¹ and whether his right to a speedy trial has been violated.

¹ The record contains an indication that defendant brought his demand for a speedy trial to trial court's attention in January, 2020. See Docket #9-14.

A separate judgment will be entered in accordance with Rule 58 of the Federal Rules of Civil Procedure.

SO ORDERED this 9th day of March, 2021.

/s/Tom S. Lee
UNITED STATES DISTRICT JUDGE